Saint Paul Planning Commission City Hall Conference Center 15 Kellogg Boulevard West

Minutes June 18, 2010

A meeting of the Planning Commission of the City of Saint Paul was held Friday, June 18, 2010, at 8:30 a.m. in the Conference Center of City Hall.

Commissioners Mmes. Donnelly-Cohen, Halverson, Merrigan, Porter, Thao, Wang, Wencl, **Present:**

Young; and Messrs. Alton, Commers, Fernandez, Gelgelu, Kramer, Nelson, and

Wickiser.

Commissioners

Absent:

Ms. *Smitten, and Messrs. *Connolly, *Schertler *Spaulding, *Ward.

*Excused

Also Present: Donna Drummond, Planning Director; Allan Torstenson, Lucy Thompson,

Patricia James, Josh Williams, Kurt Schultz, and Sonja Butler, Department of

Planning and Economic Development staff.

I. Approval of minutes June 4, 2010.

> MOTION: Commissioner Commers moved approval of the minutes of June 4, 2010. Commissioner Nelson seconded the motion. The motion carried unanimously on a voice vote.

II. **Chair's Announcements**

Chair Donnelly-Cohen announced that a list of the Transportation Committee members will be sent out to all the Commissioners. It lists the eight members from the community and the four members of the Planning Commission. The chair of the Transportation Committee will be Bob Spaulding. The date of the first meeting has not been set yet, but information will be going out soon. Letters have gone out to those who applied, both those who have been selected and those not selected.

III. **Planning Director's Announcements**

Donna Drummond reported that the City Council approved the parking code amendments. However, the Council did make an amendment from what the Planning Commission recommended and pulled out the parking reductions for establishments with a wine, beer, or liquor license. The Council requested a followup study of licensing for those types of uses and may consider future parking reductions if licensing requirements can be strengthened to addresss problem establishments.

IV. PUBLIC HEARING: Fitzgerald Park Precinct Plan Area Plan – Item from the Neighborhood Planning Committee. (Lucy Thompson, 651/266-6578)

Chair Donnelly-Cohen announced that the Saint Paul Planning Commission was holding a public hearing on the Fitzgerald Park Precinct Plan Area Plan Summary. Notice of the public hearing was published in the Legal Ledger on Date May 13, 2010, and was mailed to the citywide Early Notification System list and other interested parties.

Lucy Thompson, PED staff person said that the purpose of the amendments is to address the certainty of an LRT station at 10th and Cedar, which is right in the middle of the Fitzgerald Park planning area. The only input received was a letter from the Capitol Area Architectural & Planning Board (CAAPB), which was distributed and it speaks in favor of the amendments. A portion of the Fitzgerald Park Precinct Plan Area is within the CAAPB boundaries and in the past they have incorporated the key ideas from this plan into their Comprehensive Plan. Ms. Thompson assumes they will do the same with these amendments. The Capitol River Council recommended these amendments, so they are in support of them as well.

Chair Donnelly-Cohen read the rules of procedure for the public hearing.

No one spoke at the hearing.

<u>MOTION</u>: Commissioner Wencl moved to close the public hearing, leave the record open for written testimony until 4:30 p.m. on Monday, June 21, 2010, and to refer the matter back to the Neighborhood Planning Committee for review and recommendation. Commissioner Merrigan seconded the motion. The motion carried unanimously on a voice vote.

V. Zoning Committee

SITE PLAN REVIEW – List of current applications. (Tom Beach, 651/266-9086)

Two items to come before the Site Plan Review Committee on Tuesday, June 22, 2010. They are: Wilder Adult Daycare at 650 Marshall Avenue, a building addition and parking; and Midwest Special Services Inc. at 900 Ocean Street, a parking lot addition.

NEW BUSINESS

#10-412-243 Canadian Pacific Rail – Conditional Use Permit to construct a portion of a building below the regulatory flood protection elevation and variance to create a slope greater than 18%. 1000 Shop Road, East of Pigs Eye Road. (*Josh Williams*, 651/266-6659)

Commissioner Wencl said that she voted against this at the Zoning Committee because she does not believe that the application provided enough basis to make the case for the variance because they could have reduced the size of the parking lot. She also thought the Mississippi River Corridor critical area standards were not taken into consideration.

Commissioner Nelson said that the major issue had to do with the classification of this area as urban open space in the plan that was approved by the Metropolitan Council, and how that matches up with the Zoning Code.

Josh Williams, PED staff, said that according to the City's zoning code, the property in question is not in an urban open space district, and it has not been since the river corridor zoning was adopted in 1982.

Allan Torstenson, PED staff, said the current zoning and the map shows what was adopted by the City Council in 1982 and approved by the EQB just before that in 1981. Flood Fringe is the overlay district, and the underlying zoning is I2. The newly adopted Comprehensive Plan identifies where the zoning code needs to be updated given the new plan. There isn't any indication in the plan that this area needs to be studied for changes to the current industrial zoning.

Commissioner Kramer said that from the City's point of view the land is properly designated and in a letter received from Tom Dimond, which was distributed, Mr. Dimond disagrees with that. His letter contains some additional information about why those designations in his opinion are not correct and were improperly enacted.

Donna Drummond, Planning Director, asked Mr. Torstenson to explain more about the background of how those districts were initially proposed and what the city did with them, and how it is handled differently with the floodplain regulations.

Allan Torstenson, PED staff explained that the critical area was created in the 1970s by governor's executive order, which created an outside boundary for the critical area that can't be changed except by the legislature or by another executive order. Within that boundary, four sub classifications were drawn, and there was a provision for changing those boundaries when each local unit of government adopted regulations to carry out the intent and purpose of the critical area. Mr. Torstenson stated that the final EQB approval took place October 15, 1981. Then an ordinance was drafted to amend the City's zoning code to include critical area regulations. Saint Paul added the critical area regulations to the existing floodplain regulations resulting in four sub districts of floodway, flood fringe, urban open space and urban diversified. Two of these are also floodplain districts, but all four are critical area districts. The ordinance that was adopted in 1982 identified the River Corridor District and its sub classifications, RC1, RC2, RC3 and RC4 as map overlay districts designed to provide comprehensive floodplain and river bluff management in accordance with Minnesota statutes including 116G (the critical area statute) and Governor's Executive Order 79-19. That is very clear. A letter dated October 20, 1981, from the EQB says they approved the Saint Paul Critical Area Plan and regulations at their October 15, 1981 meeting, and asked that the City formally adopt the Critical Area Plan and regulations within 45 days of the EQB approval. The City adopted the ordinance in January. Staff and the Planning Commission need to follow the ordinance that was approved and adopted.

Commissioner Commers asked what role the Planning Commission would play if the MCPA or the FAA approvals are conditional. Will the permit then come back to the Planning Commission or is that an administrative function?

Commissioner Kramer said that some of the approvals and verifications have already been received, and this also requires a site plan review. Mr. Josh Williams, PED staff, explained the approvals that have been received and what has not been received yet.

Upon further questions by Commissioner Commers, Commissioner Kramer said a conditional use permit that requires approvals at levels other then the City does not go into effect unless these approvals have been received. These bodies do not have the ability to change a permit, so if they approve something that the City has not approved, the applicant will have to apply for a modification or change in the previous conditional use permit. He also explained that applicants

have two (2) years to meet the conditions of the permit and variance. They also can apply for an additional extension through the Planning Administrator for an additional year.

Donna Drummond, Planning Director, explained that under state statute 15.99, the City needs to respond to an application in 60 days. The City has the ability to extend that for another sixty (60) days if necessary, and that additional sixty (60) days is reserved for any potential appeal to City Council.

<u>MOTION</u>: Commissioner Kramer moved the Zoning Committee's recommendation to approve the conditional use permit subject to additional conditions. The motion carried 12-3 (Commers, Nelson, Wencl) on a voice vote.

There was a discussion at Zoning Committee with Reid Soley, Department of Safety and Inspections, regarding the vacant building program and residential use affidavits. Commissioner Kramer summarized the process and explained that there are some cases where a residential use affidavit was signed and the applicant changed their plan for a building and applied for a nonconforming use permit or a variance. Mr. Soley showed a revised form that he had been working on that was even clearer where the applicant would make some additional certifications. The committee was satisfied with the process.

Commissioner Alton added that there is anecdotal evidence that a purchaser of a foreclosed house has signed this residential use affidavit and then promptly wanting it to be a duplex and being told they had to come to the Planning Commission. The Department of Safety and Inspections (DSI) is attempting to solve this problem in cooperation with Planning & Economic Development (PED).

Commissioner Wickiser said that it's his belief that a lot of these issues are a function of the market, and it's not necessarily the city's job or the Planning Commission's job to engage in the market in this capacity.

Commissioner Kramer added that Assistant City Attorney Peter Warner advised that the residential use affidavit is essentially a snapshot in time of what the applicant's intentions are and circumstances can change. When making decisions on these nonconforming use permits, his advice is to follow the code, and that the residential use affidavit is simply additional information about the veracity and wherewithal of the applicant and what the applicant understood when they bought the property. It is not a code finding; it is just additional information.

Upon a question by Commissioner Young about why DSI is requiring these category 2 or category 3 vacant building to be returned to a single family use, Commissioner Kramer said that it was because the properties were in single family districts and that the zoning was no longer appropriate and the units had gone vacant for more then 365 days, which triggers the procedure for approving or denying nonconforming uses.

Commissioner Alton added that if the units had been vacant for less then one year, they could have continued as a nonconforming use, but because the vacancy was over a year, they need to get approval for a nonconforming use or a rezoning of the property.

Commissioner Kramer announced the items on the agenda for the next Zoning Committee meeting on Thursday, June 24, 2010.

VI. <u>Saint Paul Sustainable Building Policy</u> – Presentation by Kurt Schultz, PED staff. (*Kurt Schultz, 651/266-6590*)

Kurt Schultz, PED staff, talked about the recently adopted Saint Paul Sustainable Building Policy for new construction. He said this is a process that has taken about two years to get where it is today. It's just one in a series of initiatives that have been undertaken over a number of years. His involvement goes back to 2005, when PED and HRA adopted the Interim Saint Paul PED/HRA Sustainability Initiative for the projects which they were invested. In 2007 the City led the State in adopting a policy for City-owned buildings. It required new construction of City-owned buildings to either be LEED Certified Silver or built to the Minnesota B3 guidelines. LEED is a recognized standard nationwide, it stands for Leadership in Energy & Environmental Design, and B3 is a standard developed for State buildings. All buildings that receive State bonding dollars need to comply with the B3 standard. Minneapolis has a similar policy, but they do not require certification, which is a process where a third party certifies that you did what you said you would do. The police station on Hamline complied with the policy and actually achieved LEED Gold certification. Each of these standards have several levels.

In December 2009 and January 2010 the City Council and HRA Board, respectively, adopted the Sustainable Building Policy for new construction of privately developed buildings in Saint Paul that receive public investment. In May and June 2010, the City Council and HRA Board adopted the same policy for municipal buildings and HRA owned buildings. Mr. Schultz said that it is important for the City to do with their own buildings that which they require the private sector to do. Back in 2007, the Minnesota Pollution Control of Agency gave the City a \$38,000 grant to undertake a process to develop a policy that could be used as a model by other municipalities around the state and beyond and the City has done that. This policy is unique and relatively easy to comply with, provides flexibility to developers and it goes into effect July 1st. An advisory group of 62 invited individuals including developers, mortgage bankers, realtors, contractors and people from the pubic sector directed the development of the policy. It was very important to have these people at the table so later when the adoption took place there would be wide spread ownership. Also was a core group of 14 people.

Mr. Schultz said that the policy applies for private development that receives more then \$200,000.00 of public financing. They identified a point at which there was a natural break, looking at past years of development and finding there was a natural break at about \$200,000.00 with a lot of development above that threshold and a lot below. Anticipated for the future is that either the threshold will be lowered from \$200, 000 to a lower number and/or adding existing buildings that are being rehabbed. It is required that the building be built to LEED Silver or equivalent in one of six other standards. Also created was the Saint Paul Overlay. Commercial projects are required to choose from one of several different standards: LEED: Green Globes, or follow the Minnesota Sustainable Building Guidelines (B3). For residential projects that reach the \$200,000.00 threshold, what needs to be done is to go with LEED for Homes, which is a new standard. LEED for new construction is used if it is a large multi-family building because it's more like a commercial project then a residential project. Or Minnesota Green Star, or Minnesota Green Communities standards can be used instead. One of the advantages of this policy is that it gives a developer flexibility if a developer is familiar with Minnesota Green Communities they can do that. In Minnesota if you receive MHFA funding you would need to follow the Minnesota Green Community standard.

One of the challenges with LEED and some other standards is that people can chase points. LEED is a point based system and you need to reach a minimum threshold. But also in order to be silver certified you need to acquire additional points by doing certain things. To help address this issue the Saint Paul Overlay was created. The Saint Paul Overlay identifies several priority areas and sets a minimum threshold for each, with which each project must comply. This is above and beyond the minimum thresholds set within each standard. So what has been done is to identify new minimum thresholds within each of these areas. Predicted energy use, predicted water use, predicted water use for landscaping, construction waste, indoor environmental quality, predicted green house gas emissions and energy data tracking are in the overlay.

For implementation, PED and DSI will work together to create a sustainable building technical committee that will oversee implementation of the policy as well as respond to requests by developers or others for variances that may be needed. PED has identified several staff members who will be sustainability facilitators and will work with project managers. They will help steer them down the path or nudge them to ensure that there is compliance with the policy.

Mr. Schultz ended by say he will be submitting a grant application to the State later in the day for training dollars. The purpose of the grant funds would be to provide training to City staff from various departments who will be working with this policy as well as developers, contractors, engineers, architects and other people who need to understand this new policy.

Commissioner Porter said that new construction was talked about, but has there been any standards established for rehabs?

Mr. Schultz said that the initial initiative from 2005 does deal with some rehabs as well. All of the NSP homes that are being rehabbed need to comply with that policy. In addition, when this new policy has been underway for two years, we will come back, review it, and probably drop the \$200,000 threshold and start developing a policy for rehab.

Commissioner Merrigan asked if there will be any educational components to the training beyond the process of complying with the city regulations to disabuse some of the notions that design professionals and developers have about how much more it is going to cost them to do the right thing. Will there be resources to help them to do that?

Mr. Schultz said he is in frequent conversation with Rich Strong and John Carmody at the Center for Sustainable Building Research as they are going to be the trainers and developing the curriculum. Mr. Schultz will mention that to them today because that is a very important point.

VII. Comprehensive Planning Committee

Chair Commers had no report.

VIII. Neighborhood Planning Committee

Chair Wencl has no report.

IX. Communications Committee

None.

Commissioner Commers said that the first meeting of the West Midway Industrial Area Study Task Force will be taking place this coming week. It will be a 10-12 month process. Commissioner Connolly will also be participating.

Commissioner Thao said that they are two thirds of the way through the Western, Hamline, and Victoria Station Area Planning Committee work and the next meeting is on Wednesday, June 30, 2010.

XI.	Old Business	
	None.	
XII.	New Business	
	None.	
XIII.	Adjournment	
	Meeting adjourned at 9:45 a.m.	
Sonja l Plannii	led and prepared by Butler, Planning Commission Secretary ng and Economic Development Department, Saint Paul	
Respectfully submitted,		Approved(Date)
	Drummond ng Director	Marilyn Porter Secretary of the Planning Commission

PED\Butler\planning commission\minutes\June 18, 2010